IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 101 of 2001

with
SPECIAL CIVIL APPLICATION NO.603 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAI ISHWARBHAI KOLI

Versus

SUPERINTENDING ENGINEER

Appearance:

1. Special Civil Application No. 101 of 2001
MR TH SOMPURA for Petitioners No. 1-16
RULE SERVED for Respondents No. 1
Ms.Nandini Joshi AGP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 19 / 12 /2001

CAV JUDGEMENT

#. Chandubhai Ishwerbhai Koli and other petitioners have filed this petition praying for a writ of mandamus or any other appropriate writ direction or orders quashing and setting aside the order dated 8.1.2001 at Annexure E to the petition and for a further prayer directing the respondents to continue the benefits under GR dated 4th July 1973 by continuing the order dated 28.12.1999 at Annexure D to the petition.

#. The facts leading to the present petition are as under:

2.1 The petitioners have been working with the respondents as daily wagers. The Secretary to Government Roads and Buildings Department addressed a communication dated 5.11.1999 to the Superintending Engineer, Roads and Buildings Circle, Ahmedabad and Superintending Engineer, Capital Project Circle, Gandhinagar stating that certain employees who are daily wagers are to be absorbed as work charged employees as per earlier Resolution dt. 4.7.1973. Accordingly said benefits were given. Accordingly the Superintending Engineer, Capital Project Circle, Gandhinagar by his office order No.325 of 1999 dated 28.12.1999 decided to confer the benefit of work charged employees to the names of the persons mentioned in his order in view of the earlier Resolution dt. 4.7,.1973.

2.2. Thereafter the Government of Gujarat in its Roads and Buildings Department by its communication dated 8.1.2001 addressed to the Superintending Engineer, Roads and Buildings , Capital Project Circle, Gandhinagar has decided to take away the benefit given under the G.R. dated 5.11.1999 and he has been requested to take appropriate action accordingly .

2.3. In view of the same the petitioners have filed this petition somewhere on 8.1.2001. When this matter came up for hearing before this court on 9.1.2000, this court issued notice to the respondents making it returnable on 29.1.2001 and status quo with regard to the petitioners' service conditions was ordered to be maintained till 3.1.2001.

2.3.A. Mr. Sompura learned advocate for the petitioner has invited my attention to the facts of the case. He invited my attention to the Resolution dated 4.7.1973 which is at Annexure-B to the petition on page 23. It provides that the persons who are working on the Nominal Muster Rolls may be converted into work charged employees. He has also invited my attention to the

Resolution/Settlement dated 1.10.1988 arrived at on 1.10.1988 copy of which is produced at Annexure-F to the petition on page 32. He has also stated that thereafter Government has also issued a Resolution dated 17.10.1988 based upon the said settlement. He has also invited my attention to Annexure-A to the petition where the names of the persons who are working since so many years with the date of joining service in the department have been mentioned. He has also invited my attention to the letter dated 5.11.1999 addressed by the Under Secretary to the Government, Roads and Building Department to the Superintending Engineer, Roads and Buildings, Ahmedabad and and Superintending Engineer Capital Project, Gandhinagar which states that the Government should follow the Resolution dated 4.7.1973 and give certain benefits to the employees. He has also invited my attention to the Office Order No.325 of 1999 dated 28.12.1999 passed by the Superintendent Engineer, Capital Project, Gandhinagar where also certain benefits as per Resolution dated 4.7.1973 are to be given. It may be noted here that Government initially decided to confer benefit as per Resolution dated 4.7.1973. However by the Resolution dated 31.3.1989 there is also instruction that the work charged employees should not be considered and therefore the original communication dated 5.1.1999 is to be cancelled.

2.3.B. The learned advocate for the petitioner has also referred to section 9A of the Industrial Disputes Act (hereinafter referred to as the Act) which provides for notice of change. He submitted that when settlement is arrived at and if the Government desires to change the conditions of the settlement, Government must give notice of chance as per section 9-A of the Act. He also submitted that in this case the workmen are likely to be affected prejudicially and there is change in conditions of service contemplated by the Government and therefore, requirement of section 9-A of the Act is required to be followed. He has also relied upon section 29 of the Act which provides of Penalty for breach of settlement or ward and also section 34 of the Act which provides for cognizance of offences. He submitted that section 9-A of the Act is a mandatory section and Government is bound to follow the said section in this behalf. He has also relied upon the judgment of the Honourable Supreme Court in the case of Divisional Superintendent vs. L.N.Kashri & ors. reported in AIR 1974 SC 1889. In para 6 on page 1889 of the said judgment the Honourable Supreme Court has held as under:

"6. The respondents were confirmed in the scale

of Rs. 1110-180. The appellants having fixed the scale and confirmed the respondents could not reduce the scale without giving any opportunity to the respondents to be heard. Further more the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board."

2.3.C. Learned advocate for the petitioners has also relied upon the judgment of this court (Coram: H.L.Gokhale-J as he was then) in SCA No.3607 of 1982 on 30.1.1996 and also the judgment of the Division Bench of this Court (Coram:B.C.Patel and M.S.Shah.JJ)) rendered in LPA No.353 of 1997 on 22.4.1997 in the case of Superintending Engineer vs. V.K.Mohmed.

#. The learned counsel for the petitioners has invited my attention to the judgment and order of this Court (Coram: A.R.Dave-J) dated 1.3.2001 in Special Civil Application No. 5248 of 2000 and Special Civil Applications Nos 889 to 939 of 2001.(in the case of Gujarat Rajya Jaher Bandhkam Majoor Mandal vs State of Gujarat) In that case also, so far as the case regarding the petitioners was concerned, the facts were identical. However, in that case the learned Government Pleader for the respondent Government has contested the interpretation of Government Resolution. The learned Government Pleader has stated that the Government Resolution has to be interpreted as per the language used in the said Resolution and the interpretation of the said Resolution is not dependent upon a particular officer. The learned Government Pleader further submitted that the petitions are premature for the reason that the workmen who have been appointed as work charged workmen have not been reverted to the post of daily wagers till today and as complete information has not been received by the Government, no action with regard to reversion of the petitioners has been taken by the Government. It was further submitted by the Government Pleader that if any condition of the agreement has not been complied with, the petitioners should take appropriate action under the provisions of Industrial Disputes Act, 1947 as an equally efficacious alternative remedy is available to the petitioners. In that case, this Court has come to the following conclusion in paras 9 and 10:

"9. I have heard the learned advocates and have also gone through the circulars and resolution referred to by the learned advocates. It is very clear that till today no order has been passed

for reverting the petitioners. It is also clear that no such decision is placed on record whereby the petitioners are to be reverted. As stated by the Ld. GP, still the Government has not received requisite information in pursuance of letter dated 23.5.2000 and therefore, no final order for reverting the workcharged employees to the post of daily wagers has been passed. It is thus very clear that these petitions are premature.

10. It has been submitted by the Ld.G.P. that the resolution dated 10.11.1997 shall be interpreted by the Government in its true spirit. He has also submitted that the interpretation given to the said resolution by different officers in different manner would not bind the Government. In the circumstances, it would not be proper to say that the Government would incorrectly interpret the said resolution. It is therefore, very clear that the apprehension of the petitioners that the Government would interpret the resolution in an incorrect manner is not well founded. Ultimately, if the respondent-Government authorities decide to revert the petitioners from w3orkcharged employees to daily wagers, the Government authorities would be doing something which would have civil consequences because in that event the petitioner-workman shall be losing certain benefits which they are getting at present and in that event it would be the duty of the Government authorities to hear the concerned workman before passing any final order which might affect the concerned workmen. In the circumstances, it is directed that if the government takes any final decision to revert any work charged workman to the post of a daily wager, before passing any such order, the Government shall hear the concerned workmen because the principles of natural justice require that before passing any order which would have adverse consequences against any person, the concerned person must be heard."

Mr. Sompura learned advocate for the petitioners has relied upon the above observations in support of his contention as regards opportunity of being heard.

#. Learned advocate for the petitioners further relied upon the judgment of this Court (Coram: P.B.Majmudar-J)

decided on 27.9.2001 in Special Civil Application No.10750 of 2000. (in the case of Gujarat Rajya Jaher Bandhkam Majoor Mandal vs. Superintending Engineer) In para 4 of this judgment, this Court has observed as under:

> "....Ultimately, if the decision is against the concerned employee, the said decision may not be implemented for a period of one week from the date of taking such decision. It is clarified that it will be open for the petitioner union to ask fori the right of audience on behalf of the concerned employee on whose behalf this petition is filed. In that case, it will not be necessary for the Government to give individual hearing to each and every employees as the petitioner union can represent the case of its members before the Government. If, ultimately the decision is against the petitioner union/employees it will be open for the aggrieved party to challenge the same in accordance with law. The State Government is directed to take appropriate decision in this behalf within a period of two months from today. It is clarified that if the concerned employee or the petitioner union as the case may be do not co-operaate in the hearing, it will be open for the State Government to pass appropriate order in accordance with law. It will not be obligatory on the part of the State Government to wait further if the petitioner union or the concerned employee do not avail of the opportunity of hearing which might be afforded by the State Government...."

#. When the matter reached hearing learned AGP Ms. Nandini Joshi for the respondent Government has invited my attention to the affidavit in reply file by P.M.Patel Dy.Executive Engineer, Sub Division No.6, Gandhinagar. Paras 6 and 7 of this affidavit are relevant and they are reproduced as under:

> "6. I say that the petitioners were working as daily wagers and I say that Government resolution dated 4.7.1973 is treated as cancelled vide the Government resolution dated 5.1.1990 and 31.3.1989.
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> 7. I say that the petitioners are getting benefits as per the Government resolution dated 17.10.1988 and they are not eligible to claim the benefits for Government resolution dated

4.7..1973. I say that the petitioners are working with respondent as per the need of the Government and being daily wagers they are not entitled for regularization and if that status is granted then it will increase financial burden on the shoulder of the Government resulting into loss of economy and unrest amongst employees. I say that with regard to the applicability of the Government resolution and other allied question and what the petitioners have alleged with regard to breach of Section 9A of the Industrial Disputes Act, change in service condition, the proper forum is the appropriate machinery under the Industrial Disputes Act and not writ jurisdiction of this Hon'ble Court."

#. The learned AGP further submitted that submitted the petitioners are working as daily wagers and and the GR dt. 4.7.73 was treated as cancelled by GR dt. 5.2.2990 and GR dt. 31.3.1989. She further submitted that the petitioners were getting benefits as per GR dt. 7.10.1988 and therefore, they are not entitled to be benefits of GR dt. 4.7.1973 which was already cancelled earlier. The benefits of the said GR were given to the petitioner by a mistake which the Government has decided to rectify. She therefore, submitted that principles of natural justice are not required to be followed.

#. Learned AGP for the Government submitted that if the earlier order dated 28.12.1999 is allowed to be implemented it will perpetuate the illegality and the petitioners will get double benefits i.e. under the G.R,. of 1973 as well as the GR of 1988 and if double payment is made then it will cause unnecessaary burden on the public exchequer. She has also submitted that no useful purpose will be served if interim relief as prayed for in this behalf is granted. Therefore, the interim relief granted earlier is required to be vacated and the petitions are required to be dismissed.

#. Learned AGP has relied upon the decision of the Honourable Supreme Court in the case of Ram Chandra Tripathi vs. U.P.Public Services Tribunal IV & ors. reported in (1994) 5 SCC 180. In para 7 the Honourable Supreme Court has held as under:

"9. After giving our anxious consideration to the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appears to us that the appellant was

not made permanent to the post of Junior Engineer. Although he was made permanent as indicated hereinabove such order was passed in complete violation of the interim order of injunction passed by the High Court in the writ proceedings which debarred the respondents from confirming any Junior Engineer. Since the order of confirmation of the appellant was made in violation of the injunction order, the mistake committed in passing the order of confirmation was corrected. In our view in such circumstances the appellant was not required to be given any opportunity of being heard for correcting such mistake because there was on occasion to take one view or the other in the matter of correction of the said mistake on the basis of representation to be made by the appellant. The order of confirmation was per se illegal and in violation of the order of injunction passed by the High Court and the same being invalid was got to be corrected, in any event....."

8.1 The learned AGP has also relied upon the decision of the Honourable Supreme Court in the case of Calcutta Municipal Corporation & anor. vs. Sujit Bran Mukherjee & ors. reported in (1997) 11 SCC 463. In para 7 the Honourable Supreme Court has held as under:

"The learned counsel for the respondents however contends that withdrawal is without notice and, therefore, it is violative of the principle of natural justice. We find no force in the abstract contention. It is now a well settled legal position and needs no reiteration. However, on the facts of this case, we do not find any reason to set aside that order for the reasons that they have not withdrawn any amount paid to them pursuant to the legal order passed in favour of the respondents. All that they have done is that they have revised the pay scale only after realising the mistake."

8.2 The learned AGP has also relied upon the judgment of this Court in the case of Dilip M.Patel vs. State of Gujarat & anor. reported in 2000(2) GLH 237 where also identical situation regarding the error committed by the Government was there and in para 9 (on page 241) of the judgment it has been observed as under:

".....Therefore, merely the petitioner who obtained a degree in Mechanical Engineering on

2.3.1985 during the course of employment cannot have a legal right to receive the grade of Rs. 650-1040/-. The petitioner have no legal right as well as a vested right under the Gujarat Civil Services (Revision of Pay Scales,) 1975 and in Gujarat Civil Services (Revision of Pay Scales) 1987. Therefore, the petitioner is not entitled to the grade of Rs. 650-1040/- and respondent has rightly cancelled the office order dated 1.4.1986 by the office order dated 29.4.1986 as it was a mistake due to administrative reasons committed by the respondent which has been rig[htly corrected before implementing the same in favoaur of the petitioner. It is settled law that if the department by error granted some benefits in favour of someone and after realising the said mistake or error and immediately the said error or mistake has been corrected then in such circumstances, it is not necessary to give any reasonable opportunity or required to observe principles of natural justice. Because in that circumstances, it is the duty of the petitioner to point out on merits that the petitioner is entitled as a legal or vested right to pay scale of Rs. 650-1040 on the basis of some statutory rules or resolution or some legal source. In the present case the petitioner is not able to point out any such base for receiving a scale of Rs. 650-1040 and according to the respondent's averments made in the reply in para 10 page 35 that this order dated 1.4.86 was issued by mistake and therefore, it was required to be cancelled and the same was rightly cancelled and cancellation of order granting the pay scale of Rs. 650-1040 was due to administrative grounds and not as a matter of punishment."

#. The learned AGP for the respondent Government has relied upon the judgment of this court (Coram: P.B.Majmudar-J) dated 7.11.2001 delivered in SCA No.12822 of 2000 along with other SCAs in the case of Gujarat Rajya Jaher Bandhkam Majoor Mandal vs. Superintending Engineer. In that matter also identical situation arose and in that case the learned Government Pleader has stated that there is no settlement arrived at between the petitioner and the State Government by which any work charge status is conferred on the petitioners by the State Government. It was argued that the so called instructions given by the Section Officer are also not based on any settlement and the said Section Officer has ignored the subsequent Government Circular dated

31.3.1989 by which the work charge benefits are withdrawn. The learned Government Pleader relied upon the Government Resolution dated 5.1.1990 to substantiate his say by which the earlier G.R. dated 4.7.1973 was withdrawn. In that case the learned Government Pleader further submitted that it seems that without verification of the various Government Resolutions and without considering the matter properly in a negligent manner, the concerned Section Officer seems to have issued the instructions to the Executive Engineers and it was incumbent upon the State Government to withdraw the said benefits.

##. However, in that case after the said arguments were advanced , Mr. Sompura learned advocate for the petitioners withdrew the petition and thereafter this Court directed the petitioners to make representation before the Government and it was also directed that the Government may hear the petitioners or the union. However, as regards the incorrect instructions issued by the concerned Section Officer, this court has observed in para 6 of its order as under:

" It is clarified that it will be open to the State Government to take action against the erring officer who is responsible for giving such reckless instructions to the Executive Engineers as in view of the aforesaid reckless action of the concerned officer the State exchequer has suffered."

It is in these circumstances that this court has stated that in this situation the petitioners are required to be heard.

#. I have considered the contentions of the learned advocate for the petitioner and also the provisions of the Industrial Disputes Act and also the judgment of the Honourable Supreme Court in the case of Divisional Superintendent vs. L.N.Kashri (Supra) . Therafter I have also considered the affidavit of the Government and also judgment of the Honourable Supreme Court in the case of Ram Chandra Tripathi (Supra) and the judgment of the Honourable Supreme Court in the case of Calcutta Municipal Corporation (Supra) in this behalf. In my view, the petitioners were working as daily wagers and and the G.R. dated 4.7.1973 was treated as cancelled by G.R. dated 5.2.1990 and GR dated 31.3.1989. The petitioner was also getting the benefits as per GR dated 7.10.1988. In my view, the benefit of GR of 1988 was

given to the petitioners by mistake and if that benefit is to be continued it will be unnecessarily burdening the State exchequer in that behalf. The Government is only trying to rectify its mistake and therefore, there is no question of principle of natural justice to be followed. When there is obvious mistake , principles of natural justice is not required to be followed. In my view Rules of natural justice do not apply in the same manner to situations which are not alike. The rules of natural justice are not cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable but flexible. Thus there are situations which demand exclusion of rules of natural justice by reason of diverse factors like time and situation of the case, . In my view when there is a natural and obvious mistake committed by the Government and when they want to rectify the said mistake rules of natural justice do not required to be to complied in this case. In my view the learned AGP has rightly relied upon the decisions of the Honourable Supreme Court in the cases of Ram Chandra Tripathy (Supra) and Calcutta Municipal Corporation (Supra) and relying upon these principles the petitioners are not entitled to prior notice or prior hearing before the Government cancels the Resolution. In my view the decisions cited by the learned advocate for the petitioners are not applicable to the facts of the present case and the petitioners are not entitled to the benefits in this behalf since they are daily wager employees.

11.1. I have also considered the judgment of this Court (Coram: H.L.Gokhale-J as he was then) in SCA 3607 of 1982 and also the judgment of the Division Bench of this Court which have been cited in this case. Those judgments are in the peculiar facts and circumstances of those cases and they are clearly distinguishable on facts of this case. However, looking to the peculiar facts and circumstances of this case, these decisions are not applicable to the facts of this case.

11.2. I have also considered the provisions of section 9-A of the I.D.Act and other contentions raised by the learned advocate for the petitioners. However, in this case as there was an obvious mistake, which has been corrected, does not affect the settlement of the petitioners and in the facts and circumstances of the case the submissions made by the learned advocate for the petitioners will not be applicable to this case. In my view the petitioners are getting the benefits as per the Resolution dated 7.10.1988 and therefore, they are not eligible to claim benefits under Resolution dated

4.7.1973. There is no prejudice to the petitioner and therefore, also there is no question of hearing the petitioners in this case.

11.3 I have also considered the judgments of this Court (Coram: A.R.Dave.J) in SCA No.5248 of 2000 decided on 1.3.2001 and also judgment of this Court (Coram:P.B.Majmudar-J) in SCA No.10750 of 2000 decided on 27.9.2001, both cited by the learned advocate for the petitioners and I have also considered the judgments of this Court (P.B.Majmudar-J) in SCA No.12822 of 2000 decided on 7.11.2001 and also judgment of this Court in the case of D.M.Patel vs State of Gujarat (Supra). In my view the judgment Mr. Justice A.R.Dave in SCA No. 5248 of 2001 and judgment of Mr. Justice P.B.Majmudar in SCA No. 10750 of 2000 are distinguishable on facts of the case. These judgments are given looking to the peculiar facts stated therein in this behalf. However, judgment of D.M.Patel vs. State of Gujarat which I have already referred to above clearly lays down the correct proposition of law and even this fact is clear from the judgment of Mr.Justice P.B.Majmudar in SCA No.12822/00 wherein the learned Judge has also clearly clarified the position, which is in favour of the Government. Therefore, in my view the contentions raised by the learned advocate for the petitioners are not even required to be considered in this behalf.

#. In view of the above, the petitioners are not entitled to the reliefs claimed in these petitions and they are dismissed. Interim relief granted earlier stands vacated. Notice discharged in both the petitions. No order as to costs.

(K.M.Mehta.J)

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##. After the pronouncement of the judgment, learned advocate for the petitioners has prayed for continuation of interim relief. The learned AGP strongly objected to the same after relying upon the judgment of the Honourable Supreme Couirt in the case of State of Orissa vs. Madan Gopal Rungta reported in AIR 1952 SC 12 and stated that once the Court has already rejected the petition, no interim relief can be granted.

##. In this matter looking to the peculiar facts and circumstances of the case, the interim relief which was granted earlier was continued during the pendency of the

matters. In the circumstances, the interim relief is ordered to continue upto 11.1.2002.

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